

GAU 2768 #

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Harry E. Emerson, III, et al. Group Art Unit: 2768
Serial No.: 09/477,936 Examiner: Not Yet Assigned
Filed: January 5, 2000
For: **SYSTEM FOR MODIFYING AND TARGETING ADVERTISING
CONTENT OF INTERNET RADIO BROADCASTS**
Old Docket No.: 17617-46
New Docket No.: 0021-46

Morristown, N.J. 07960
September 8, 2000

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Assistant Commissioner for Patents
Washington, D.C. 20231
ATTENTION: Group Director, Group 2768

Sir:

**PETITION TO MAKE SPECIAL FOR NEW APPLICATION
UNDER M.P.E.P. § 708.02 (VIII)**

Applicant hereby petitions to make special this new application. The application has not yet been examined by the United States Patent and Trademark Office (the "Office").

Applicant submits that all of the claims in this case are directed to a single invention. If the Office determines that all claims presented are not obviously directed to a single invention, then applicant will make an election, without traverse, as a prerequisite to the grant of special status.

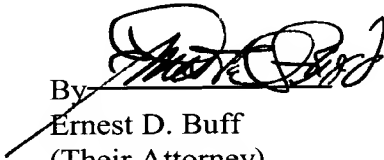
A pre-examination search of the subject matter encompassed by the above-identified application has been made by a professional searcher. The pre-examination search was conducted in the United States Patent and Trademark Office. The field of search covered Class 709, subclasses 217, 218 and 219, and Class 705, subclasses 26 and 27. Copies of the references developed by the pre-examination search were submitted with applicants' Information Disclosure Statement dated April 4, 2000. A statement pertaining to the pre-examination search listing the references deemed most closely related to the subject matter encompassed by the claims is submitted herewith.

Applicant also submits herewith a detailed discussion of the references, which discussion particularly points out how the claimed subject matter is distinguishable over the references.

Enclosed herewith is a check in the amount of \$130, to cover the fee for this Petition. In the event that any additional fee is deemed to be required by 37 C.F.R. 1.17(i), it is requested that applicants be contacted at (973) 644-0008 and provided an opportunity to effect payment thereof.

A duplicate of this petition is attached.

Respectfully submitted,
Harry E. Emerson, III, et al.

By 
Ernest D. Buff
(Their Attorney)
Reg. No. 25,833
(973) 644-0008



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Sir:

STATEMENT PERTAINING TO PRE-EXAMINATION SEARCH
IN ACCORDANCE WITH MPEP § 708.02(VIII)

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In accordance with MPEP § 708.02 (VIII), applicants, by and through their attorney, hereby submit that a pre-examination search was made for the above-identified application. The search was conducted by applicants' agents at the United States Patent and Trademark Office. The field of search covered Class 709, subclasses 217, 218 and 219, and Class 705, subclasses 26 and 27.

The search identified the following references:

U.S. Patent Number	Inventors(s)
5,572,643	D. H. Judson
5,727,156	D. Herr-Hoyman
5,737,619	D. H. Judson
5,794,210	R. M. Rogers, et al.
5,793,972	T. M. Shane
5,802,299	J. Logan, et al.
5,805,815	W. C. Hill
5,809,242	D. E. Shaw, et al.
5,854,897	C. J. Radziewicz et al.
5,870,546	S. T. Kirsch

Each of the foregoing references has been identified and discussed in the Detailed

Discussion of the References Submitted in Compliance with MPEP § 708.02 (VIII).

Respectfully submitted,
Harry E. Emerson, III, et al.

By 

Ernest D. Buff
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0021-46-PMSS1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Sir:

**DETAILED DISCUSSION OF THE REFERENCES SUBMITTED
WITH THE INFORMATION DISCLOSURE STATEMENT
IN COMPLIANCE WITH MPEP § 708.02 (VIII)**

In accordance with MPEP § 708.02(VIII), applicants hereby submit a detailed discussion of references applicable to the above-identified application. Each of these references was listed in the Information Disclosure Statement filed with the United States Patent and Trademark Office on April 4, 2000 in connection with the above-identified application.

A. U. S. Patent No. 5,572,643 to Judson

United States Patent 5,572,643 to Judson (hereinafter the '643 patent) discloses a system and method of browsing the Worldwide Web of the Internet using an HTML-compliant client supporting a graphical user interface and a browser. The method steps are initiated as a web page is being displayed on the graphical user interface, the web page having at least one link to a hypertext document preferably located at a remote server. In response to the user clicking on the link, the link is activated by the browser to thereby request downloading of the hypertext document from the remote server to the graphical user interface of the client. While the client waits for a reply and/or as the hypertext document is being downloaded, the browser displays one or more different types of

informational messages to the user. Such messages include, for example, advertisements, notices, messages, copyright information and the like. This is the description of a typical web browser.

The '643 patent discloses an enhancement of the web browser by using dynamic display of information objects during linking. It teaches a method and means for displaying a portion of a retrieved hypertext document on the user's browser during at least a portion of a time period between the activation of the link and completion of the downloading of the hypertext document. The '643 patent does not generating, storing and substituting local radio commercials of various predetermined time lengths in place of a plurality of broadcast radio commercials on an Internet radio program, as called for by applicants' claims. On the other hand, the method and system claimed herein does not display a portion of a retrieved hypertext document on the user's browser during at least a portion of a time period between the activation of the link and completion of the downloading of the hypertext document. The system and method defined by applicants' claims do generate a plurality of local radio commercials of various predetermined time lengths, digitize and store the local radio commercials and associated time lengths in an array at an Internet Service Provider and substitute the local radio commercials in place of a plurality of broadcast radio commercials on an Internet radio program. These structural and procedural differences patentably distinguish the system and method of applicants' claims from the '643 patent disclosure.

B. U. S. Patent No. 5,727,156 to Herr-Hoyman, et al.

United States Patent 5,727,156 to Herr-Hoyman, et al., (hereinafter the '156 patent) discloses a method and apparatus for posting hypertext documents to a hypertext server so as to make the hypertext documents accessible to users of the hypertext document system while securing against unauthorized modification of the posted hypertext documents. The hypertext documents form a portion of the World Wide Web and a process for posting

hypertext documents begins with an author authoring the hypertext pages on a client computer, sending an add request to a server computer, causing the generation of a unique identifier for the author of the hypertext document, obtaining a charge authorization from the author, and sending a database entry request from the client to the server comprising the unique identifier, the charge authorization and the hypertext files comprising the document. At the server, the validity of the charge authorization is verified, and if the charge authorization is valid, the hypertext pages are stored in association with the unique identifier and the client is provided with a password needed to effect future modifications of the hypertext pages so published.

The '156 patent discloses a method for posting hypertext documents to a hypertext server to form an accessible hypertext document comprising a plurality of hypertext pages secured against unauthorized modification. It teaches generating, at the server computer, a unique identifier for an author of the hypertext document, and for obtaining a charge authorization from the author. The '156 patent does not disclose generating, marking, storing and substituting a plurality of local radio commercials of various predetermined time lengths in place of a plurality of broadcast radio commercials on an Internet radio program, as required by applicants' claims. By way of contrast, the system and method of applicants' claims do not provide for generating, at the server computer, a unique identifier for an author of the hypertext document, nor do they provide for obtaining a charge authorization from the author. The system and method claimed herein do provide for generating a plurality of local radio commercials of various predetermined time lengths, digitizing and storing the local radio commercials and associated time lengths in an array at an Internet Service Provider, marking the local radio commercials with a digital marker to indicate the start and duration time of the local radio commercial within an Internet radio program and substituting the local radio commercials in place of a plurality of broadcast radio commercials on an Internet

radio program. These procedural differences patentably differentiate the subject system and method from the '156 patent disclosure.

C. U. S. Patent No. 5,794,210 to Goldhaber, et al.

US Patent 5,794,210, (hereinafter the '210 patent), to Goldhaber, et al., discloses a method for compensating users for viewing advertising information over the Internet. This advertising may be targeted to specific users based on a database of demographic profiles. Users have the option of paying for viewing and downloading information, such as prerecorded music or research reports, by using credits accumulated as payment for viewing advertisements. By way of contrast, the system and method claimed herein generates, marks, stores and substitutes a plurality of local radio commercials of various predetermined time lengths in place of a plurality of broadcast radio commercials on an Internet radio program. It does not provide for downloading information on the basis of a debit/credit generated in a user's account in exchange for viewing specific content items and advertisements.

The '210 patent discloses a method that compensates users for viewing advertising information over the Internet. The advertising information may be targeted to specific users based on a database of demographic profiles. This method disclosed by the '210 patent is readily differentiated from the method and system called for by applicants' claims. Specifically, the system and method claimed by applicants provide for generating a plurality of local radio commercials of various predetermined time lengths, digitizing and storing the local radio commercials and associated time lengths in an array at an Internet Service Provider, marking the local radio commercials with a digital marker to indicate the start and duration time of the local radio commercial within an Internet radio program and substituting the local radio commercials in place of a plurality of broadcast radio commercials on an Internet radio program. This system and method clearly differ from the method disclosed by the '210 patent, wherein users have the option

of paying for viewing and downloading information, such as prerecorded music or research reports, by using credits accumulated as payment for viewing advertisements. Moreover, the '210 patent does not provide for generating a plurality of local radio commercials of various predetermined time lengths and substituting the local radio commercials in place of a plurality of broadcast radio commercials on an Internet radio program, as called for by applicants' claims. Based on these structural and procedural distinctions, the system and method of applicants claims patentably define over the '210 patent.

D. U. S. Patent No. 5,737,619 to Judson

United States Patent 5,572,619 to Judson (hereinafter the '619 patent) discloses a computer program product and method for browsing the World Wide Web of the Internet using a client machine (e.g., a personal computer) supporting a graphical user interface and an Internet browser. The method locally stores, retrieves and outputs information objects to reduce the waiting time normally associated with the download of hypertext documents having high-resolution graphics. In one embodiment, the method begins as a web page is being displayed on the graphical user interface, the web page having at least one link to a hypertext document preferably located at a remote server. In response to the user clicking on the link, the link is activated by the browser to thereby request downloading of the hypertext document from the remote server to the graphical user interface of the client. While the client waits for a reply and/or as the hypertext document is being downloaded, the browser displays a previously cached information object.

The '619 patent discloses a web browser with content delivery over an idle connection and interstitial content display. It discloses a method and means for downloading and storing, in the background, hypertext documents linked within a viewed hypertext document, whereby the stored documents may be viewed immediately upon clicking links within the viewed document. A method and means are disclosed for storing but not displaying the information object in the client machine

as the user browses the first hypertext document and before the user takes a predetermined action with respect to the clickable graphic to initiate downloading of the second hypertext document. The '619 patent does not disclose generating, marking, storing and substituting a plurality of local radio commercials of various predetermined time lengths in place of a plurality of broadcast radio commercials on an Internet radio program, as required by applicants' claims. On the other hand, the system and method called for by applicants' claims do not provide for storing without displaying the information object in the client machine as the user browses the first hypertext document and before the user takes a predetermined action with respect to the clickable graphic to initiate downloading of the second hypertext document. The system and method claimed by applicants do provide for generating a plurality of local radio commercials of various predetermined time lengths, digitizing and storing the local radio commercials and associated time lengths in an array at an Internet Service Provider, marking the local radio commercials with a digital marker to indicate the start and duration time of the local radio commercial within an Internet radio program and substituting the local radio commercials in place of a plurality of broadcast radio commercials on an Internet radio program. These structural and procedural differences provide ample basis upon which to predicate patentability of the applicants' claimed system and method over the '619 patent disclosure.

E. U. S. Patent No. 5,793,964 to Rogers, et al.

United States Patent 5,793,964 to Rogers, et al. (hereinafter the '964 patent) discloses a web browser system that makes requests to web servers on a network which receives and fulfills requests as an agent of the browser client. Distributed sub-agents are organized as distributed integration solution (DIS) servers on an intranet network supporting the web server, which also has an access agent server accessible over the Internet. DIS servers execute selected capsule objects which perform programmable

functions upon a received command from a web server control program agent. The servers retrieve from a database gateway coupled to a plurality of database resources upon a single request made from a Hypertext document, requested information from multiple data bases located at different types of databases geographically dispersed. They perform calculations, formatting, and other services prior to reporting to the web browser or to other locations, in a selected format, as in a display, fax, printer, and to customer installations or to TV video subscribers, with account tracking.

The '964 patent discloses a web browser system. It discloses a control program agent node located somewhere on the Internet supporting a control program agent coupled to and supporting a homepage by a coupling or addressing with a uniform resource locator. The '964 patent does not disclose generating, marking, storing and substituting a plurality of local radio commercials of various predetermined time lengths in place of a plurality of broadcast radio commercials on an Internet radio program, as required by applicants' claims. On the other hand, the system and method recited by applicants' claims do not utilize a control program agent node located somewhere on the Internet supporting a control program agent coupled to and supporting the homepage by a coupling or addressing with a uniform resource locator. The system and method claimed by applicants do provide for generating a plurality of local radio commercials of various predetermined time lengths, digitizing and storing the local radio commercials and associated time lengths in an array at an Internet Service Provider, marking the local radio commercials with a digital marker to indicate the start and duration time of the local radio commercial within an Internet radio program and substituting the local radio commercials in place of a plurality of broadcast radio commercials on an Internet radio program. In light of these structural and procedural differences, the system and method called for by applicants' claims patentably distinguish the '964 patent disclosure.

F. U. S. Patent No. 5,793,972 to Shane

United States Patent 5,793,972 to Shane (hereinafter the '972 patent) discloses a system and method for providing an interactive response to direct mail programs. The system comprises a recipient database, a mail generator, and a web server computer operationally connected through the Internet to remote computers accessible by direct mail recipients. The recipient database stores data records containing addressing information such as the name, mail, fax or e-mail address, and a unique personal identification code for each direct mail recipient. The mail generator retrieves recipient data from the database and generates a multiplicity of direct mail pieces each displaying the name, address, and a uniform resource locator containing the personal identification code for one recipient. A responding recipient accesses the web server computer by entering the uniform resource locator displayed on the direct mail piece into a web browser on a remote computer. The web server computer retrieves recipient data from the recipient database correlated to the personal identification code contained in the uniform resource locator and uses this recipient data to create a unique interactive web page.

The '972 patent discloses a web browser system. It teaches a method and means for creating a recipient database containing a plurality of recipient data records each comprising a name, an address and a unique personal identification code, and providing each of a plurality of recipients with a uniform resource locator containing a unique personal identification code. The '972 patent does not disclose generating, marking, storing and substituting a plurality of local radio commercials of various predetermined time lengths in place of a plurality of broadcast radio commercials on an Internet radio program, as required by applicants' claims. On the other hand, the system and method of applicants' claims do not create a recipient database containing a plurality of recipient data records each comprising a name, an address and a unique personal identification code, nor do they provide for each of a plurality of recipients with a uniform resource locator

containing a unique personal identification code. The system and method claimed by applicants do generate a plurality of local radio commercials of various predetermined time lengths, digitize and store the local radio commercials and associated time lengths in an array at an Internet Service Provider, mark the local radio commercials with a digital marker to indicate the start and duration time of the local radio commercial within an Internet radio program and substitute the local radio commercials in place of a plurality of broadcast radio commercials on an Internet radio program. These structural and procedural differences provide strong basis supporting patentability of applicant' claimed system and method over the '972 patent disclosure.

G. U. S. Patent No. 5,802,299 to Logan, et al.

US Patent 5,802,299, (hereinafter the '299 patent), to Logan, et al., discloses a network based hypertext display system and method employing a supervisory computer interconnected with one or more information display units and one or more remote document servers via a network, such as the Internet. The supervisory computer controls the content displayed by the display units by transferring to each unit a control information file as well as hypertext document files which are locally stored in the display units. The control file determines the extent to which the display unit can access remotely stored information and provides additional information which is used to alter the presentation to the user. Stored control information is used to rewrite hypertext document such that certain links are disabled, and to suppress the appearance of visual cues associated with the displayed anchor which identifies selected links in the referencing document. Links and other information in local and remotely accessed documents are rewritten in accordance with commands created by a content developer using an interactive content authoring system. Means are employed for controlling the duration of a given user session in response to the material selected for display, the time of day, and user demographics.

Locally stored data copied from original documents stored on remote servers is periodically validated and updated when the validation indicates that the original has been modified.

The '299 patent discloses a method and interactive system for authoring hypertext document collections. It discloses retrieval means for accessing a plurality of hypertext records, each of the records containing displayable information and at least some of the records containing one or more links to enable the retrieval means to access others of the records. The '299 patent does not disclose generating, marking, storing and substituting a plurality of local radio commercials of various predetermined time lengths in place of a plurality of broadcast radio commercials on an Internet radio program, as required by applicants' claims. On the other hand, the system and method claimed by applicants do not provide retrieval means for accessing a plurality of hypertext records, each of the records containing displayable information and at least some of the records containing one or more links to enable the retrieval means to access others of the records. The system and method of applicants' claims do generate a plurality of local radio commercials of various predetermined time lengths, digitize and store the local radio commercials and associated time lengths in an array at an Internet Service Provider, mark the local radio commercials with a digital marker to indicate the start and duration time of the local radio commercial within an Internet radio program and substitute the local radio commercials in place of a plurality of broadcast radio commercials on an Internet radio program. Based on these structural and procedural differences the system and method defined by applicants' claims and the '299 patent disclosure are patentably distinct.

H. U. S. Patent No. 5,805,815 to Hill

United States Patent 5,805,815 to Hill (hereinafter the '815 patent) discloses a system and method for waiting for the content of a next page to arrive and be displayed by

a web browser. Small amounts of relevant content are stored and maintained in the hyperlinks themselves. This extra content is revealed to users during download wait time. Hypertext links that contain and reveal extra content are called content laden links. By displaying content which is useful and relevant to the user while the next web page is being fetched, useless dead time can be turned into productive time and the satisfaction level of the user increased.

The '815 patent discloses a method and interactive system for authoring hypertext document collections. It teaches a method and means for fetching conditionally displayed data associated with hypertext link-embeddable content, and embedding the conditionally displayed data within a hypertext link from the current web page to a next web page to provide a content laden hypertext link. The '815 patent does not disclose generating, marking, storing and substituting a plurality of local radio commercials of various predetermined time lengths in place of a plurality of broadcast radio commercials on an Internet radio program, as required by applicants' claims. On the other hand, the system and method claimed herein do not disclose fetching conditionally displayed data associated with hypertext link-embeddable content, nor do they provide for embedding the conditionally displayed data within a hypertext link from the current web page to a next web page to provide a content laden hypertext link. The system and method claimed by applicants do generate a plurality of local radio commercials of various predetermined time lengths, digitize and store the local radio commercials and associated time lengths in an array at an Internet Service Provider, mark the local radio commercials with a digital marker to indicate the start and duration time of the local radio commercial within an Internet radio program and substitute the local radio commercials in place of a plurality of broadcast radio commercials on an Internet radio program. In light of these structural and procedural differences, applicants' claimed system and method patentably distinguish the '815 patent disclosure.

I. U. S. Patent No. 5,809,242 to Shaw, et al.

United States Patent 5,809,242 to Shaw, et al. (hereinafter the '242 patent) discloses a method and system that provides, in an electronic mail system, scheduled messages to a remote user in a batch-oriented system. In a preferred embodiment of the present invention, a user creates and/or reads electronic mail locally. While the user creates the electronic mail, a message is displayed to the user on a portion of the local monitor, the message preferably changing in accordance with a local display schedule and stored on a local storage device. The message is preferably targeted to the particular user. When the user is ready to transmit the e-mail created and/or receive e-mail addressed to him, the user's local client establishes a connection via a modem with a remote e-mail server system. The remote e-mail server system not only receives the e-mail transmitted by the user and/or transmits e-mail addressed to the user, but also updates the user's local messages in accordance with a distribution schedule. After the e-mail and message updates are transmitted, the user's local client computer is disconnected from the remote e-mail server system.

The '242 patent discloses a system and method for an electronic mail system that displays advertisements to a user at a local computer when the local computer is off-line. It teaches a method and means for creating an electronic mail message at the local computer, and outputting the advertisement at the local computer while the local computer is off-line. The '242 patent does not disclose generating, marking, storing and substituting a plurality of local radio commercials of various predetermined time lengths in place of a plurality of broadcast radio commercials on an Internet radio program, as required by applicants' claims. On the other hand, the system and method claimed herein do not create an electronic mail message at the local computer, nor do they output an advertisement at the local computer while the local computer is off-line. The system and method of applicants' claims do generate a plurality of local radio commercials of various predetermined

time lengths, digitize and store the local radio commercials and associated time lengths in an array at an Internet Service Provider, mark the local radio commercials with a digital marker to indicate the start and duration time of the local radio commercial within an Internet radio program and substitute the local radio commercials in place of a plurality of broadcast radio commercials on an Internet radio program. These structural and procedural differences provide basis for predicated patentability of the applicants' claimed system and method over the '242 patent disclosure.

J. U. S. Patent No. 5,854,897 Radziewicz, et al.

United States Patent 5,854,897 to Radziewicz, et al. (hereinafter the '897 patent) discloses a method and communications marketing system that allows a client station accessing a computer network through a Network Service Provider (NSP) to receive advertisements whenever the connection path between the client station and the NSP is idle. The NSP monitors traffic to/from the client station to determine when the connection path is idle. An announcement server connected to the NSP transmits advertising messages and other information to the client station when the connection path is idle. The advertisements are displayed in a predetermined location of a browser client window of the client station. The advertisements can be played/displayed for a predetermined time period.

The '897 patent discloses a system and method for transmitting advertising messages and other information to the client station when the connection path is idle. It teaches a method and means for transmitting an announcement to a network-terminating device when the connection path is idle, as determined by a monitoring step. The '897 patent does not disclose generating, marking, storing and substituting a plurality of local radio commercials of various predetermined time lengths in place of a plurality of broadcast radio commercials on an Internet radio program, as required by applicants' claims. On the other hand, the system and method claimed by applicants do

not transmit an announcement to a network-terminating device when the connection path is idle, as determined by a monitoring step. The system and method claimed herein do generate a plurality of local radio commercials of various predetermined time lengths, digitize and store the local radio commercials and associated time lengths in an array at an Internet Service Provider, mark the local radio commercials with a digital marker to indicate the start and duration time of the local radio commercial within an Internet radio program and substitute the local radio commercials in place of a plurality of broadcast radio commercials on an Internet radio program. These structural and procedural differences provide strong evidence supporting patentability of the subject system and method over the '897 patent disclosure.

K. U. S. Patent No. 5,870,546 to Kirsch

United States Patent 5,870,546 to Kirsch (hereinafter the '546 patent) discloses a method and system that provides for server based controlled management over a client reference to a resource locator independently selected by a client computer system and referencing a server external web server. The web server system provides a client system with a predetermined URL reference to the Web server system encoded with predetermined redirection and accounting data including a reference to a second server system. On receipt by the first web server system of the predetermined URL reference from said client system, the predetermined redirection and accounting data is decoded from the predetermined URL and processed by the Web server system to provide the client system with a redirection message including the reference to said second server system. The accounting data is processed by the web server system and resulting data is selectively stored by the web server system.

The '546 patent discloses a method and apparatus for redirection of server external hyper-link reference. It teaches a method and means for receiving a predetermined request from a

network, wherein the predetermined request corresponds to a predetermined page element, and wherein the predetermined request includes predetermined request data, and processing the predetermined request data to obtain an identification of the predetermined page element. The '546 patent does not disclose generating, marking, storing and substituting a plurality of local radio commercials of various predetermined time lengths in place of a plurality of broadcast radio commercials on an Internet radio program, as required by applicants' claims. By way of contrast, the system and method claimed herein do not provide for receiving a predetermined request from a network, wherein the predetermined request corresponds to a predetermined page element, and wherein the predetermined request includes predetermined request data, nor do they provide for processing the predetermined request data to obtain an identification of the predetermined page element. The system and method of applicants' claims do generate a plurality of local radio commercials of various predetermined time lengths, digitize and store the local radio commercials and associated time lengths in an array at an Internet Service Provider, mark the local radio commercials with a digital marker to indicate the start and duration time of the local radio commercial within an Internet radio program and substitute the local radio commercials in place of a plurality of broadcast radio commercials on an Internet radio program. Based on these structural and procedural differences, patentability of the applicants claimed system and method over the '546 patent disclosure can be predicated.

Respectfully submitted,
Harry E. Emerson, III, et al.



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The stamp of the Patent Office hereon may be taken as an acknowledgment
by it on the date stamped of:

(FINAL FEE
(AMENDMENT in application
(Patent)

- Patent made to Pat 300,02 (VII)
- Returned on Re-invention bond
- Delivered Division of Hygiene
- IDS

Serial No. 09/477,936

